HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1373 of 2006

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Between:

G.R.Ramachandra Setty & others

… Appellants.

And

The Rayalaseema Textile Workers Union,
Rep. by its Secretary Y. Gonvindappa
& others.

….Respondents.

Counsel for the petitioners : Shri S. Ramachandra Rao,
Senior Advocate assisted by
Shri K.R. Prabhakar

Counsel for respondent Nos.5 and 9 : Shri P.B. Vijay Kumar

Counsel for respondent No.7 : Shri A. Rajashekar Reddy

Counsel for respondent No.13 : Shri A.Ramalingeswara Rao

Counsel for respondent Nos. 1 to 4 : None

:: J U D G M E N T ::

20.03.2007

Per G.S. SINGHVI, C.J.

This is an appeal for setting aside order dated 27-12-2006 vide which the learned Single Judge dismissed WVMP No.2668 of 2006 and WPMP No.34787 of

2006 filed by the appellants in Writ Petition No.18328 of 2004 and batch for vacating interim order dated 21-2-2005 and for issue of a direction to the parties to maintain the status quo.

Background facts:

i) Rayalaseema Textile Workers Union filed Writ Petition No.22081 of 2000 for issue of a mandamus to Regional Provident Fund Commissioner, Andhra Pradesh and Recovery Officer-cum-Assistant Provident Fund Commissioner, Kadapa to recover the provident fund dues amounting to Rs.59,12,309/- from respondent No.3, namely, Gattu Nagabhushana Rao, Managing Director of M/s.G.N.Products Private Limited, Adoni, Kurnool District (for short, 'the company').

ii) The company filed Writ Petition No.19232 of 2001 for quashing the action of the respondents to seize 81 motors from its premises.

iii) Syed Nabi Peer filed Writ Petition No.1486 of 2004 for issue of a mandamus to respondent Nos.1 and 2 i.e. Mandal Revenue Officer, Adoni and District Collector, Kurnool to recover the amount of gratuity from the company in terms of order dated 26-12-2002 passed by the Prescribed Authority under the Payment of Gratuity Act, 1972.

iv) M. Hussainappa and five others filed Writ Petition No.1614 of 2004 with prayer similar to the one made in Writ Petition No.1486 of 2004.

v) Rayalaseema Textile Workers Union and three others filed Writ Petition No.18328 of 2004 for issue of a writ of prohibition to respondent Nos.1 to 3 not to interfere with the sale and transportation of movables by the company in accordance with settlement dated 20-4-2004 arrived at between the management of the company and the Unions.

vi) The company filed two more cases i.e. Writ Petition Nos.24857 of 2004 and 49 of 2005 for restraining respondent Nos.1 to 3 from attaching its properties and from arresting its Managing Director G. Nagabhushana Rao in execution of orders passed by Assistant Labour Commissioner, Adoni on the applications filed by the employees.

The above noted writ petitions were heard by the learned Single Judge with Contempt Cases No.874 and 875 of 2004 instituted by Syed Nabi Peer and M.Hussainappa for punishing Shri Ajay Jain, District Collector, Kurnool and Shri Venkata Seshaiah, Mandal Revenue Officer, Adoni under Sections 10 to 12 of the Contempt of Courts Act by alleging that they wilfully disobeyed the interim orders passed by the Court.

The learned Single Judge briefly adverted to the factual matrix of various

cases, noticed that the company is liable to pay various dues under Provident Fund and Miscellaneous Provisions Act, 1952, Employees Insurance Corporation Act, 1948, the Central Excise Act, the Andhra Pradesh General Sales Tax Act, the Registration Act, 1908 etc. total amounting to Rs.59,12,309/- and passed order dated 21-2-2005 for auction of the properties of the company and directed District Judge, Kurnool to conduct auction within a period of one month. The operative part of that order reads as under:

> "In the aforesaid circumstances, without going into the merits of the respective contentions from all sides as raised, the District Judge, Kurnool is directed to process and take entire steps for conducting public auction as per the procedure contemplated under law and by fixing the same on any date not later than one month from the date of receipt of copy of this order. It shall be open for the District Judge, Kurnool to give notice to all the parties concerned and give a hearing to all the parties herein on their appearance for which the date is fixed on 4-3-2005. In the exigency, it shall be open for the District Judge to conduct auction to lots viz., one for machinery and the other for immovable properties separately. All the parties herein are directed to appear before the District Judge on 4-3-2005 for making any modalities and taking all such steps as may be necessary. It shall be open for the parties to assist the District Judge in regard to the process and procedure for conducting the auction alone and beyond.
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> Office is directed to communicate copy of this order along with relevant records to the District Judge, Kurnool within a period of one week from today.
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> Post on 11-4-2005 for submission of report as to the steps taken and progress made in the auction by the District Judge, Kurnool for further directions."

In compliance of the aforementioned order, District Judge, Kurnool issued notice dated 28-11-2006 proposing to auction the properties of the appellants. At that stage, the appellants filed WVMP No.2668 of 2006 for vacating order dated 21-2-2005 and WPMP No.34787 of 2006 for ordering status quo.

The learned Single Judge declined the appellants' prayer for vacating order dated 21-2-2005 on the premise that the said order was passed after hearing both the parties and auction notification was issued in furtherance of the direction given by the Court.

Shri S. Ramachandra Rao, Senior Advocate assailed order dated 21-2-2005 mainly on the ground that while ordering auction of the properties of the company, the learned Single Judge did not even advert to the merits of the case set up by the parties and did not consider the issue of balance of convenience, irreparable injury and public interest. Learned counsel submitted that once the property of the company is disposed of, nothing would remain to be decided in the main petitions and the appellants, who were impleaded as parties to the writ petition by order dated

25.11.2005 will be put to irreparable loss. He further argued that majority of the writ petitions are not even maintainable and the learned Single Judge gravely erred by ordering auction of the assets of the company without deciding the issue of maintainability.

Shri A. Ramalingeswara Rao, learned counsel for respondent No.13 submitted that his client had participated in the auction held in furtherance of the direction given by the Court and if the auction is held to be untenable, then the concerned authority should be directed to refund the amount deposited by it.

We have considered the respective submissions and perused the record. We have also gone through the reports sent by Principal District Judge, Kurnool from time to time including the one dated 7-2-2007.

A perusal of order dated 21.02.2005 leaves no manner of doubt that while considering the issue of interim relief, the learned Single Judge neither touched the merits of the case nor directed his attention to the factors like balance of convenience and irreparable injury. The learned Single Judge also did not consider whether there was any justification for passing an order which would result in loss of the substratum of the company. Even the issue relating to entitlement and preferential right of the revenue to recover the dues of taxes under various statutes etc. was not addressed by the learned Single Judge. Therefore, the direction given by the learned Single Judge vide his order dated 21.02.2005 for auction of the properties of the company is legally unsustainable.

Insofar as order dated 27.12.2006 is concerned, we find that the learned Single Judge was unduly influenced by the fact that order dated 21.02.2005 had been passed after hearing the parties. Undisputedly, the present appellants were not parties to Writ Petition No.18328 of 2004 when order dated 21.02.2005 was passed. They were impleaded as party respondents by order dated 25.11.2005 passed in W.P.M.P.No.8165 of 2005. Therefore, they did not have any occasion to make their submissions in the matter of interim order passed by the learned Single Judge.

We are further of the view that it would be in the interest of the parties that the conflicting claims made by the parties in different writ petitions are finally resolved and only at that stage, the Court can consider the legality and justification of giving a direction for disposal of the property of the company for realization of the dues. The elements of balance of convenience and irreparable injury are clearly against the auctioning of the property of the company, which, as mentioned above, would result in loss of its substratum.

In the result, the appeal is allowed. Order dated 27-12-2006 passed by the learned Single Judge in WVMP No.2668 of 2006 and WPMP No.34787 of 2006 is

set aside. As a sequel to this, WVMP No.2668 of 2006 is allowed and interim order dated 21-2-2005 is vacated.

Since District Judge, Kurnool had conducted auction in pursuance of order dated 21-2-2005 and that order is being set aside, he is directed to refund the amount deposited by respondent No.13.

Writ Petition No.18328 of 2004 shall now be listed for final hearing before an appropriate Single Bench on 16.04.2007. Other connected matters be also listed before the learned Single Judge on 16.04.2007.

The Registry is directed to issue notices to counsel for all the parties that the main writ petitions will be listed for final hearing on 16.04.2007.

G.S.SINGHVI, C.J.

March 20, 2007

C.V.NAGARJUNA REDDY, J.

svs